

August 22, 2017

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

**RE: Request for Comment on Petition for Expedited Declaratory Ruling Filed by
Amerifactors Financial Group, LLC
CG Docket Nos. 02-278 and 05-338**

Ms. Dortch:

As a small business owner, I write in opposition to the Petition for Expedited Declaratory Ruling Filed by Amerifactors Financial Group, LLC ("Petition") which seeks a declaratory ruling that fax transmissions to anything other than telephone facsimile machines are exempt from the requirements of the Telephone Consumer Protection Act ("TCPA") 47 U.S.C. § 227 *et seq.*¹

American small business owners are sick and tired of junk faxes. Don't give these petitioners an unregulated avenue to deliver them. Rather than permitting a deluge of robo faxes, which will *inevitably* lead to more litigation and more business owner frustration, the Commission ought to deny this Petition. There is not a single shred of evidence for the proposition that Congress wanted a TCPA exemption for robo faxes of any kind.

Our boutique law firm here in Minneapolis gets spam faxes all the time. They are a major disruption to our business. This Petition seeks to allow Amerifactors an exemption for its faxes from the TCPA so that they can barrage us with even more garbage, nuisance, spam faxes. In truth, most modern small businesses like our law firm receive faxes thru a virtual PBX service, in our case Grasshopper.com. Grasshopper is a great service that allows us to receive faxes at anytime, via email PDF, and to deal with them immediately whether we are in the office or not. Therefore, faxing our small law firm with unwanted and unsolicited spam faxes is even *more* disruptive because that fax is then emailed out as a PDF every member of our law firm. That means that *every* firm member is disrupted by *every* spam fax—*every* time.

You can bet that if the American Bankers Association supports it, it has to be bad. The ABA sent you a letter on August 17, 2017 supporting the Amerifactors Petition. That should be warning enough that the Petition seeks to hurt small businesses like mine. Frankly one has to wonder, what is the ABA is doing supporting such an exemption? I know what: The bankers would love to be able to send junk faxes to any small business so that they could to collect debts, hawk lines of credit, shill for new accounts, and otherwise be a unrepentant nuisance to all of us.

The FCC needs to stand on the side of American small businesses in rejecting this Petition. Just because technology allows something, does not mean that it's a good idea. American businesses are not willing to let companies force them to sort through spam faxes from banks, or anybody else. This would be

a punch in the gut to small businesses who will waste precious time sorting through these mindless faxes in order to get to the ones that represent legitimate business communications. Ink and toner aren't the only issue. Wasted time and productivity from spam faxes is far more damaging to small businesses.

The Petition essentially asks the Commission to give away the valuable professional time and resources of every small business owner in America. *Now that's a shameless ask.* It explains why the same bankers who nearly destroyed our economy for a generation, repeatedly allowed our personal data to be compromised, and opened millions of fraudulent bank accounts in our names, are now supporting the Petition. Nothing would give the banker members of the ABA more glee than knowing that they could fill up every American small business directly with junk faxes with impunity from the consequences—and immunity from the TCPA.

Don't forget that part of the reason the TCPA was enacted were the spam faxes dumped on busy congressional offices. See 136 CONG. REC. H5818-02, (daily ed. July 30, 1990) (statement of Rep. Markey discussing how junk faxes are analogous to receiving a letter with postage-due)(quoting Jerry Knight, *The Junk Fax Attack: Why Maryland May Outlaw Unsolicited Advertisements*, WASH. POST, May 23, 1989, at C3). In this case, history repeats itself. Don't let it. Deny this Petition. The technology may be different, but the expensive time-wasting nuisance is the same.

Thank you for your consideration of this important bi-partisan issue.

Respectfully,



BARRY & HELWIG, LLC

Peter F. Barry, Esq.
Attorney at Law

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¹ I have been a consumer rights lawyer in Minneapolis for 20+ years and an adjunct professor of law teaching Consumer Rights Law at Mitchell Hamline School of Law for 15 years. I represent many consumers who are subjected to robo calls on their cellular telephones, both by original creditors and by third-party debt collectors collecting on others' accounts. I have appeared in state and federal courts in individual cases in 18 states. I am a current member of the National Association of Consumer Advocates and its 2005 Consumer Lawyer of the Year.